

Decision 04-07-024 July 8, 2004

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
SOUTHERN CALIFORNIA GAS COMPANY  
for Authority Pursuant to Public Utilities Code  
Section 851 to Grant an Easement at the Honor  
Rancho Storage Field to SOUTHERN  
CALIFORNIA EDISON COMPANY (U 338-E).

Application 04-01-040  
(Filed January 30, 2004)

(U 904 G)

**OPINION GRANTING APPROVAL UNDER  
PUBLIC UTILITIES CODE SECTION 851 FOR CONVEYANCE  
OF EASEMENT BY SOUTHERN CALIFORNIA GAS COMPANY  
TO SOUTHERN CALIFORNIA EDISON COMPANY**

**1. Summary**

This decision grants the unopposed application<sup>1</sup> of Southern California Gas Company (SoCalGas) for Commission authorization under Pub. Util. Code § 851<sup>2</sup> to grant a non-exclusive easement to Southern California Edison Company

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<sup>1</sup> The application was filed on January 30, 2004. In Resolution ALJ 176-3128, dated February 11, 2004, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary.

<sup>2</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise referenced.

(SCE). SCE will use the easement as a corridor to accommodate a second transmission line in the area, if a second transmission line becomes necessary in the future.<sup>3</sup>

## **2. Background**

In this application, SoCalGas seeks authorization pursuant to Section 851 to grant SCE an overhead utility easement over a vacant parcel of land located in Santa Clarita, County of Los Angeles, California. The property that would be encumbered by the easement is part of a larger parcel at which SoCalGas' Honor Rancho underground gas storage field is located. The size of the proposed easement is approximately 100 feet by 500 feet.

SCE has held three exclusive easements over part of this property since 1969 and 1972. SCE currently operates a 220 kilovolt transmission line, the "Pardee-Vincent" line, over a portion of these easements. SCE originally acquired the easements for use as a corridor if, in the future, SCE determines that a second transmission line is needed.

W9/Rye South Realty, L.L.C. (Rye) is currently developing several projects in the City of Santa Clarita. The City of Santa Clarita is requiring Rye to construct and dedicate several new public streets as a condition of approval for one of these projects. One of these new streets, Aurora Drive, partially encroaches on SCE's existing easements.

SoCalGas wishes to grant SCE another easement on the property so that Rye may continue the development and dedicate Aurora Drive and SCE will retain its right to a corridor easement in the area. This new easement will be

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<sup>3</sup> If SCE wishes to construct the second transmission line in the future, SCE must obtain prior Commission approval and undergo appropriate environmental review at that time.

functionally equivalent to SCE's original easements, except it will occur on the opposite side of the Pardee-Vincent Transmission line which will ensure that SCE will be able to expand its transmission services at some future date, if necessary. The replacement of the existing easements with a new easement is required to accommodate proposed development of adjacent to the SoCalGas Honor Rancho property.

### **3. Terms and Conditions for Grant of Easement**

Under the terms of the easement, SCE may construct, operate, use, maintain, inspect, repair, replace, reconstruct, enlarge, alter or remove overhead electric lines on the property as necessary or convenient for the transmission, distribution, regulation or control of electric energy to be used for light, heat, power, or communication. However, SCE may not place towers or poles on the site.

The easement terms also grant SCE rights of ingress to and egress from the property. SCE may remove and trim trees and shrubs as permitted by law, install gates in fences on the site, and keep the property clear of any debris, buildings, parked vehicles or other obstructions that may pose hazards or interfere with SCE's access to or use of the area. SCE may also make surface cuts on the ground in the easement area in order to maintain clearance between the wires and cables and the surface of the ground as may be required by the Commission or any other governmental authority or as necessary for the construction, maintenance, or operation of the electric lines, communication circuits, and appurtenances on the site.

SoCalGas has reserved rights to install underground pipelines, fences, and roads on the easement area and to engage in other unanticipated uses of the area necessary to support SoCalGas' utility business. However, SoCalGas may not

exercise these rights in a manner that interferes with or endangers the operation or maintenance of SCE's electric lines and communication circuits or SCE's access to its facilities on the site. SoCalGas also may not deposit any earth, rubbish, debris or any other material on or near to the easement area that would pose a danger to SCE's electric lines and communications circuits or might interfere with SCE's access to these facilities.

The easement terms do not grant SCE any right, title to, or interest in any oil, gas, petroleum or other mineral or hydrocarbon substances within the easement area. If SoCalGas or its successors in interest wish to prospect for oil, gas, petroleum, or other mineral or hydrocarbon substances in the future, they must do so from adjacent land and in a manner that does not endanger or interfere with any structures or facilities placed on the easement by SCE.

SoCalGas may not grant any other easements over the site without SCE's written consent, except for easements that SoCalGas is required to grant to the City of Santa Clarita or other public agencies.

SCE has generally agreed to indemnify and hold SoCalGas and the previous owner of the property, Newhall Land and Farming Company, (Newhall) harmless from any and all claims, damages and liability arising out of SCE's use of the easement, except for liability caused by the sole negligence or willful misconduct of SoCalGas or Newhall.

In addition, SCE has agreed to indemnify and hold SoCalGas harmless from any claims or liability arising out of the presence or suspected presence of hazardous materials brought to the easement area by or on behalf of SCE or which are released in connection with SCE's operations at the site, except for claims or liability caused by the sole negligence or willful misconduct of SoCalGas or Newhall.

Rye will pay SoCalGas \$22,000.00 for the easement to be granted to SCE.<sup>4</sup> This amount equals the assessed value of the easement.

#### **4. Environmental Review**

The California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*, hereafter CEQA) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereinafter CEQA Guidelines, Section 15002.)

Under Public Resources Code Section 21080, a project is defined as, “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” In this case, the proposed action is merely to replace an existing dedicated easement with a new, comparable easement. The purpose of this easement is to accommodate future transmission capacity expansion, if required, and as such does not rise to the level of a “project” under Public Resources Code Section 21080. No CEQA review is required for this transaction. Any proposed future expansion of transmission facilities in the new easement area should be reviewed by the Commission pursuant to a separate application consistent with the requirements of General Order (GO) 131-D.

While we believe this transaction does not rise to the level of a project at this time, we are concerned with two aspects of this application. First, the application suggests that there may be proposed development on property adjacent to the location of SCE’s original easement. Any lease or conveyance by

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<sup>4</sup> SCE will pay nothing for the easement.

SoCalGas of its property for potential development or encroachment would require a Section 851 application for approval and would trigger a CEQA analysis by the Commission in either a Lead or Responsible Agency capacity. Second, SCE has demonstrated in previous applications before the Commission a commitment to develop portions of the land under its transmission lines. Since this new easement is dedicated for *future* transmission additions and it is impossible at this time to assess whether any non-tariffed development will interfere with future transmission additions, we will prohibit any development along this easement until the transmission line has been designed and built, unless SCE obtains our prior approval of such development.

## **5. Ratemaking Issues**

SoCalGas proposes to credit the \$22,000 that it will receive from Rye for the easement to its Miscellaneous Operating Revenues account. This treatment of revenues from the proposed easement is unopposed and is consistent with the treatment of other revenues that SoCalGas receives from rental and leased facilities.

## **6. Discussion**

Under Section 851, the Commission must approve any transfer, sale, lease, assignment or encumbrance of utility property that is necessary or useful to the utility in the performance of its duties to the public. Granting of an easement on utility property is an encumbrance, and therefore requires approval under Section 851.<sup>5</sup>

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<sup>5</sup> As the Commission previously stated: “The language of Section 851 is expansive, and we conclude that it makes sense to read “encumber” in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility’s plant, system, or property.” (D.92-07-007, 45 CPUC 2d 24, 29.)

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is in the public interest. In reviewing a Section 851 application, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”<sup>6</sup> The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operations or affecting the availability of adequate service at reasonable rates to utility customers.<sup>7</sup>

We find that SoCalGas’ conveyance of the proposed easement to SCE is in the public interest. The proposed easement will not interfere with SoCalGas’ use of the property for its utility operations or with service to SoCalGas customers, and will be utilized in a manner consistent with Commission and legal requirements. Moreover, SoCalGas’ conveyance of the easement to SCE will uphold and preserve SCE’s pre-existing right to an easement across the property for use as a transmission line corridor, if an additional transmission line is needed to serve the public in the future. Conveyance of the easement to SCE will also enable Rye to proceed with its project and the construction and dedication of Aurora Drive, a public street. SoCalGas will be fully compensated for the value of the new easement.

We also approve the proposed ratemaking treatment for the compensation that SoCalGas will receive from Rye for the easement.

For all of the foregoing reasons, we grant the application of SoCalGas pursuant to Section 851, effective immediately.

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<sup>6</sup> D.3320, 10 CRRC 56, 63.

<sup>7</sup> D.00-07-010 at p. 6.

## **7. Preliminary Categorization**

In addition, we find no need to alter the preliminary determinations as to categorization and the need for a hearing made in Resolution ALJ 176-3128 (February 11, 2004).

## **8. Comments on Draft Decision**

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Late filed comments were filed by SoCalGas on June 28, 2004. We have made minor technical revisions to the decision in response to these comments.

## **9. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Myra J. Prestidge is assigned ALJ in this proceeding.

### **Findings of Fact**

1. The proposed easement will not interfere with SoCalGas' use of the property for utility purposes or with service to SoCalGas customers, and will be utilized in a manner consistent with Commission and legal requirements.
2. SoCalGas' conveyance of the proposed easement to SCE will uphold and preserve SCE's pre-existing right to an easement across the property for potential use as a transmission line corridor, if SCE determines that an additional transmission line is needed in the future.
3. SoCalGas' conveyance of the easement to SCE will enable Rye to construct and dedicate Aurora Drive as required for development of its project in the City of Santa Clarita.
4. It is not possible to assess the feasibility of future non-tariffed development on SCE's new easement area, until SCE has engineered any future transmission lines to be located in the new easement area.



5. Compensation received by SoCalGas from Rye for the proposed easement will be credited to SoCalGas' Miscellaneous Operating Revenues account, as consistent with ratemaking treatment for other SoCalGas revenues received from ceased or rented facilities.

6. SoCalGas will be fully compensated for the assessed value of the easement.

**Conclusions of Law**

1. SoCalGas' conveyance of the proposed new easement to SCE is not a project under Public Resources Code Section 21080 and therefore does not require environmental review.

2. SoCalGas is required to obtain our prior approval of any development on its property in the area of SCE's previous easements pursuant to Section 851.

3. SCE must obtain our prior approval of any future expansion of transmission facilities in new easement areas, as required by GO 131-D.

4. Consistent with Section 851, SoCalGas' conveyance of the easement to SCE for the project will serve the public interest and should be authorized.

5. The decision should be effective today in order to allow the easement to be conveyed to SCE expeditiously.

**O R D E R**

**IT IS ORDERED** that:

1. Southern California Gas Company (SoCalGas) is authorized to convey an easement, as described in Exhibit B to the Application, to Southern California Edison Company (SCE).

2. SoCalGas shall credit the \$21,000.00 received for the easement to its Miscellaneous Operating Revenues account.

3. SoCalGas shall obtain our prior approval pursuant to Section 851 of any development on its property in the area of the three easements previously conveyed to SCE. SCE shall not permit any development in the new easement area by any third party until any future transmission facilities have been designed and built, unless SCE first obtains our approval of such development.

4. This proceeding is closed.

This order is effective today.

Dated July 8, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners